

REMARKS**INTRODUCTION:**

In accordance with the foregoing, the title has been amended, the specification has been amended to reflect the status of a parent application, claims 1 and 3 have been amended, and claims 5-7 have been added. No new matter is being presented, and approval and entry of the foregoing amendments and new claims are respectfully requested.

Claims 1-7 are pending and under consideration. Reconsideration is requested.

OBJECTION TO THE TITLE:

In the Office Action at page 2, the title was objected to as not being descriptive. In view of the proposed amended title set forth above, the outstanding objection to the title should be resolved.

REJECTION UNDER 35 U.S.C. §101:

On page 2 of the Office Action, the Examiner rejects claims 1-4 under 35 U.S.C. §101 as being drawn to nonfunctional descriptive material. This rejection is traversed and reconsideration is respectfully requested.

In general, in order to reject a recorded data structure as not complying with 35 U.S.C. §101, the Examiner must show that the subject matter is non-functional descriptive material as opposed to functional descriptive material. As noted in MPEP 2106, non-functional descriptive material includes arrangements of data such as music. However, non-functional descriptive material does not include data structures that impart functionality when employed as a computer or apparatus component. These data structures are considered functional descriptive material since the data structure is generally understood to include a logical relationship among data elements. Such a logical relationship supports specific data manipulation functions, which when recorded on a physical medium, is considered statutory subject matter within the meaning of 35 U.S.C. §101.

On page 3 of the Office Action, the Examiner asserts that claims 1 and 4 recite non-functional descriptive material stored on the recording medium. Even assuming arguendo that stored encoded data, per se, is non-functional descriptive material, it is noted that claims 1 and 4, as originally presented, recite more than a mere storage of data. Instead, claims 1 and 4 also recite a functional relationship between the elements of the stored data so as to be distinguishable from mere listings of data. As such, claims 1 and 3 are considered functional descriptive material. Since claims 1 and 3 are recited as being recorded, it is respectfully

submitted that claims 1 and 3, as previously presented, are properly considered statutory subject matter within the meaning of 35 U.S.C. §101.

Claims 2 and 4 are deemed patentable due at least to their depending from corresponding claims 1 and 3.

However, in order to further clarify the logical relationship as would have been understood by one of ordinary skill in the art without narrowing the scope of the claims, claims 1 and 3 have amended to recite that the use of the data by an apparatus as would have been understood by one of ordinary skill in the art.

NON-STATUTORY DOUBLE PATENTING REJECTION:

On pages 3-10 of the Office Action, the Examiner rejects claims 1-4 under the judicially created doctrine of obviousness-type double patenting in view of U.S. Patent No. 6,757,480, 6,721,493, and 6,674,957. Since claims 1-4 of the instant application have not yet been indicated as allowable and new claims 5-7 have not been analyzed, it is believed that any submission of a Terminal Disclaimer or arguments as to the non-obvious nature of the claims would be premature. As such, it is respectfully requested that the applicant be allowed to address any obviousness-type double patenting issues remaining once the rejection of the claims under 35 U.S.C. §101 is resolved and that the rejection be reconsidered in light of the claims presented above.

PATENTABILITY OF NEW CLAIMS:

Claims 5-7 are deemed patentable due at least to the reasons for patentability of claims 1 and/or 3.

CONCLUSION:

In accordance with the foregoing, it is respectfully submitted that all outstanding objections and rejections have been overcome and/or rendered moot. And further, it is respectfully submitted that all pending claims patentably distinguish over the prior art. Thus, there being no further outstanding objections or rejections, the application is submitted as being in condition for allowance which action is earnestly solicited.

If the Examiner has any remaining issues to be addressed, it is believed that prosecution can be expedited by the Examiner contacting the undersigned attorney for a telephone interview to discuss resolution of such issues.

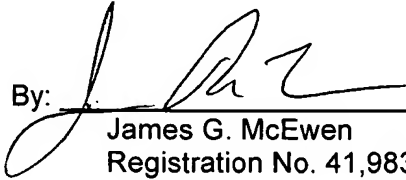
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If there are any additional fees associated with the filing of this Amendment, please charge the same to our Deposit Account No. 503333.

Respectfully submitted,

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